

on sharing of information imposed by contracts with third parties or Applicable Law. Without limiting the foregoing, BT will provide AT&T and its representatives reasonable access during normal business hours to the information, books and records relating to Concert and its business, operations, contracts, assets, liabilities, revenues and other financial information.

18.6 Books and Records. From the date of this Agreement until the Closing Date, each parent shall, and shall cause its Affiliates to, continue to maintain the books, accounts and records of such parent and the AT&T GCS Business or the BT GCS Business, as the case may be, in the usual, regular and ordinary manner on a basis consistent with prior years and periods, except as required by Applicable Law or the GAAP of the applicable jurisdiction of such businesses, as the case may be.

18.7 Further Assurances. The parties shall use their Reasonable Best Efforts to consummate the transactions contemplated hereby, subject to the terms hereof. Each party shall execute, or cause to be executed, such documents and other instruments, and take or cause to be taken such further actions, as may be reasonably requested to carry out the provisions hereof and the transactions contemplated hereby, subject in all cases, to the terms hereof.

18.8 Other Documents. As soon as reasonably practicable after the date hereof but prior to the Closing Date, the parents shall negotiate in good faith to reach mutual agreement on the definitive terms and conditions of:

(a) an investment fund agreement, which shall contain the terms set forth in Schedule 18.8 attached hereto and such other terms and conditions as the parents shall agree (the "Investment Fund Agreement");

(b) systems and other support services agreements, including, to the extent not covered in a Supply Agreement (Parent Components), agreements for the supply by the parents to the Newco Group of capacity and other telecommunications services;

(c) an employee matters agreement, which shall contain terms and conditions as the parents shall agree (the "Employee Matters Agreement");

(d) to the extent not covered in the IPR Agreement, any trademark licenses to be granted by the parents to the Newco Group or *vice versa*;

(e) the transition plan (the "Transition Plan"), identifying the actions to be taken by the parents, consistent with legal, regulatory and contractual obligations, including time schedules for implementation, in order to facilitate the establishment of the Newco Group and the Venture Business;

(f) the pricing and risk principles to be incorporated in the subcontracts referred to in Section 7.6;

(g) supply agreements for the supply by the Newco Group to each parent of facilities and services involving the Global Network Facilities of the Newco Group, including multi-use facilities and earth stations; and

(h) supply agreements for the supply by each parent to the Newco Group of facilities and services involving the Domestic Network Facilities of such parent, including multi-use facilities.

**18.9 Activities With Respect to Alliances.** With respect to the Persons listed in Schedule 18.9, AT&T shall take the actions listed in such Schedule within the time periods set forth therein; provided, however, that, if AT&T is prevented or restrained

by any order, judgment, injunction, award or decree by any Governmental Body from so taking such action, so long as AT&T is diligently and in good faith pursuing all available legal remedies to cause such order, judgment, injunction, award or decree to be withdrawn, terminated, canceled or released, the applicable time period set forth in Schedule 18.9 shall be tolled for the period of time any such order, judgment, injunction, award or decree is in effect and binding on AT&T; provided, further, however, that AT&T shall be entitled to engage in the transitional and other post-termination activities set forth on Schedule 18.9.

18.10 Confidentiality.

(a) The terms of the separate Confidentiality Agreements dated March 11, 1998 and June 8, 1998 between the parents (the "Confidentiality Agreements") shall apply to all Evaluation Material (as defined therein) disclosed to the other parent as a result of the discussions, negotiations or due diligence process contemplated in this Agreement.

(b) Each parent shall, and shall cause its Affiliates and its or their directors, officers, employees and agents (each, a "Recipient") to, maintain in confidence the terms of this Agreement and the other Transaction Agreements and all information furnished to each such Recipient in connection with or relating to this Agreement, the other Transaction Agreements or the business and affairs of the Newco Group. The preceding sentence shall not apply to information that

(i) becomes generally available to the public other than as a result of disclosure by such recipient contrary to this Agreement, (ii) was available to such Recipient on a non-confidential basis prior to its disclosure to such Recipient by the Newco Group or

the other parent, (iii) becomes available to such Recipient on a non-confidential basis from a source other than the Newco Group or any other Recipient unless such Recipient knows that such source is bound by a confidentiality agreement or is otherwise prohibited from transmitting the information to such Recipient by a contractual obligation, (iv) is independently developed by such Recipient without reference to confidential information received from the Newco Group, (v) is required to be disclosed by Applicable Law or legal process, or (vi) is required to be disclosed by any listing agreement with, or the rules or regulations of, any securities exchange on which securities of such Recipient or any of its Affiliates are listed or traded. In the case of a disclosure in the circumstances described in clause (v) of the preceding sentence, the disclosing Recipient shall use its Reasonable Best Efforts to provide Thistle BV and the other parent with prompt notice thereof so that Thistle BV or the other parent may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, the disclosing Recipient agrees to furnish only that portion of the information that it is legally required to do so and, at the request of Thistle BV or the other parent, shall use its Reasonable Best Efforts to obtain assurances that confidential treatment will be accorded such information.

18.11 Name of Thistle BV. The chairman of the board of directors of each parent shall, prior to the Closing, consult with each other and agree upon the corporate name of Thistle BV to be adopted as of the Closing.

18.12 Netherlands Tax Ruling. If either AT&T or BT fails to obtain a ruling from the Netherlands Tax Authorities which ensures that their respective contributions of Assets to the Newco Group will be exempt from Netherlands capital tax under

application of article 37 of the relevant Netherlands Tax law (*i.e.*, *Wet op Belastingen van Rechtstverkeer*) and Article 28 (Non-Discrimination) of the Convention between the United States of America and The Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (December 18, 1992), then the parties agree to negotiate in good faith to secure an alternative mutually acceptable jurisdiction of incorporation (other than the U.S. or U.K.) for Thistle BV.

## ARTICLE 19

### PRE-CLOSING ACQUISITION TRANSACTIONS

#### 19.1 Acquisition Transactions.

(a) This Section 19.1 shall apply to any businesses, investments or assets acquired by either parent or any of its Group Companies by merger, acquisition, business combination or other transaction (an "Acquisition Transaction") on or after the date of this Agreement and prior to the Closing Date which, if acquired after the Closing Date, would violate the provisions of Section 11.1 or the second sentence of Section 11.6 after giving effect to any exceptions thereto, other than any of the foregoing acquired pursuant to an agreement initially executed and delivered prior to July 24, 1998 (collectively, the "New Assets"). If an Acquisition Transaction involves New Assets and other assets or the acquisition of an interest in a business that owns New Assets and other assets, this Article 19 shall apply only to the New Assets; provided, that, if the acquired interest in a business is a non-Controlling

interest, the party making such Acquisition Transaction may elect to treat the entirety of such interest as New Assets in order to satisfy its obligations under this Article 19.

(b) In the case of any New Assets, the parents and the CEO shall, following the Closing Date, cooperate in a review of such New Assets and their potential value to the Newco Group. Unless the parents agree to the contrary, the CEO shall have the authority to make a determination to purchase New Assets and assume related liabilities up to an aggregate Acquisition Cost (as defined below) of \$25 million. If so determined by the CEO, Thistle BV or one or more of the Newco Subsidiaries shall purchase for cash any such New Assets and Thistle BV or one or more of the Newco Subsidiaries will assume any related liabilities approved by the CEO at a price (unless otherwise agreed by the applicable parent and by Thistle BV through a decision of the Management Board, with DirectorCo, as the sole director of the Management Board, acting pursuant to a majority vote of each of the Class A Representatives and the Class B Representatives) equal to the price paid to acquire such New Assets, adjusted to reflect any liabilities not assumed by Thistle BV or the applicable Newco Subsidiary, plus the applicable cost of funds of the parent or its Group Company attributable to such purchase price for the period from the acquisition thereof by the parent or its Group Company to the closing of the sale of the New Assets to Thistle BV or one or more of the Newco Subsidiaries (such cost, the "Acquisition Cost"). If the CEO decides not to purchase the New Assets, unless the parents agree to the contrary, none of Thistle BV or any of the Newco Subsidiaries shall purchase any such New Assets. The provisions of Section 15.3(c)

shall be applicable, *mutatis mutandis*, to any New Assets and related liabilities acquired or assumed by Thistle BV.

(c) Any acquisition of New Assets with an Acquisition Cost in excess of \$25 million, in a transaction or series of related transactions, shall require the approval of the Management Board in accordance with Section 3.5(e). The applicable parent shall, or shall cause its applicable Group Company to, divest any New Assets not so acquired by Thistle BV or any of the Newco Subsidiaries within one year following the Closing Date.

(d) The parties will cooperate to make any purchases by Thistle BV or any of the Newco Subsidiaries contemplated by this Section 19.1 not financially coercive and efficient from a tax and accounting perspective to the Newco Group or the parent, or the parent of the Group Company, that acquired the New Assets and the parties will cooperate in structuring any such purchases. Any purchases of New Assets described in this Section 19.1 shall be pursuant to mutually acceptable stock or asset purchase agreements.

19.2 Obligation to Obtain Governmental Approvals.

(a) Notwithstanding anything to the contrary in this Agreement other than Section 19.4, but including the definition of "Best Efforts" and "Reasonable Best Efforts," nothing herein shall prevent or restrict either parent or any of its Group Companies from engaging in any Acquisition Transaction after the date hereof and prior to the Closing Date.

(b) Any Acquisition Transaction engaged in by a parent or any of its Group Companies after the date hereof and prior to the Closing Date shall not

affect the application of Section 20.2(a), 20.2(b) or 20.2(c) or the obligation of the parent, or the parent of the Group Company, undertaking the Acquisition Transaction otherwise to continue to use its Best Efforts to obtain the Key Governmental Approvals for the transactions contemplated by the Transaction Agreements at the earliest practicable date concurrently with pursuing such Acquisition Transaction.

### 19.3 Material Acquisition Transaction.

(a) This Section 19.3 shall apply to any Material Acquisition Transaction. A “Material Acquisition Transaction” shall mean an Acquisition Transaction that involves the acquisition of a Person engaged predominantly in the Global Communications Services business or the Carrier Services business which either (i) derives aggregate annual revenues from such business in excess of \$500 million or (ii) owns or operates Global Network Facilities with a fair market value in excess of \$250 million, in either case as determined by reference to the most recently completed full fiscal year of such Person.

(b) If a parent or any of its Group Companies (the “engaging party”) enters into any written agreement for a Material Acquisition Transaction, it shall promptly notify the other parent (the “non-engaging party”) in writing. Within 60 days following receipt of such notice from the engaging party, the non-engaging party shall be entitled to seek written confirmation from the engaging party that it will continue to perform its obligations to use its Best Efforts to obtain the Key Governmental Approvals for the transactions contemplated by the Transaction Agreements at the earliest practicable date concurrently with pursuing such Material Acquisition Transaction. The engaging party shall respond to such request for



confirmation within 10 days following receipt of a request for written confirmation. If it gives such written confirmation, then it must perform its Best Efforts to obtain the Key Governmental Approvals for the transactions contemplated by the Transaction Agreements at the earliest practicable date concurrently with pursuing such Material Acquisition Transaction.

(c) If the engaging party does not confirm in writing to the non-engaging party that it will perform such obligation within 10 days after receipt of the non-engaging party's request for confirmation, and thereafter, diligently and continuously perform such obligation, the non-engaging party shall be entitled forthwith, by prompt notice to the engaging party, to terminate this Agreement and the other Transaction Agreements.

(d) If, on the expiration of the 18-month period provided in Section 20.2(a), the Key Governmental Approvals shall not have been obtained for the transactions contemplated by the Transaction Agreements, the non-engaging party shall have the right to decide, by giving notice in writing to the engaging party on or before the nineteenth month anniversary of the date of this Agreement, whether or not it wishes to require both the AT&T Parties and the BT Parties to continue to be bound by the terms of this Agreements and the other Transaction Agreements for a period specified by it of up to an additional 12 months after the expiration of the 18-month period provided in Section 20.2(a) or to terminate this Agreement and the other Transaction Agreements.

(e) If the non-engaging party decides not so to terminate the Transaction Agreements, it may require the engaging party to use its Best Efforts to

obtain the Key Governmental Approvals for the transactions contemplated by the Transaction Agreements at the earliest practicable date concurrently with pursuing such Material Acquisition Transaction and shall itself continue to use its Best Efforts to obtain the Key Governmental Approvals. If the Key Governmental Approvals have still not been obtained on the date specified by the non-engaging party pursuant to Section 19.3(d), either parent shall have the right, exercisable by giving written notice to the other parent within 30 days thereafter, to terminate this Agreement and the other Transaction Agreements.

(f) If the non-engaging party shall not have exercised its rights to terminate the Transaction Agreements prior to the end of the 30-month period following the date hereof, and if the Key Governmental Approvals have still not been obtained by the end of such 30-month period and such failure was in some meaningful part caused by the engaging party's undertaking of such Material Acquisition Transaction, unless the non-engaging party is in material breach of its obligations under this Agreement or any other Transaction Agreement, the engaging party shall pay to the non-engaging party, following the termination of the Transaction Agreements at the end of such 30-month period, all of the fees, charges, costs, disbursements and expenses, including travel, lodging and other expenses, of the non-engaging party and its employees, agents, representatives, investment bankers, counsel, including charges for in-house counsel, accountants and other advisers incurred in connection with the negotiation and preparation of this Agreement and the Transaction Agreements and all prior agreements, term sheets, letters of intent and other documents that have been superseded by this Agreement, including the Term

Sheet, and all other activities relating to the transactions contemplated by the Transaction Agreements (excluding the purchase of the Purchased Shares) up to an aggregate maximum of \$150 million. If the Transaction Agreements are terminated at the end of such 30-month period, within 30 days after the expiration of such 30-month period, the non-engaging party shall deliver to the engaging party a statement, in reasonable detail, of all such fees, charges, costs, disbursements and expenses. Within five days following delivery of such statement, the engaging party shall make payment, by wire transfer of same day funds, of such amount to the non-engaging party.

(g) If the Transaction Agreements are not terminated under this Section 19.3 and the Closing shall occur, the provisions of Section 19.1 shall apply with respect to New Assets involved in the Material Acquisition Transaction.

19.4 No Acquisition Transactions. After the date of this Agreement and prior to the Closing Date, neither parent shall be permitted to undertake any Material Acquisition Transaction if (a) the principal business and predominant source of revenue of such Person or assets is derived from the offer, sale or distribution of Global Business Communications Services, and (b) a substantial portion of the assets of such Person or such assets, as applicable, that comprise New Assets could not reasonably be expected to be acquired by Thistle BV for regulatory or antitrust reasons.

## ARTICLE 20

CLOSING20.1 Closing.

(a) The AT&T Parties, on the one hand, and the BT Parties and Thistle BV, on the other hand, shall promptly notify the other parties upon receipt of notice that all Key Governmental Approvals required to be obtained by the notifying parties in connection with the transactions contemplated hereby have been obtained. Thereafter, provided that all other conditions set forth in Article 21 have been satisfied or waived, the closing (the "Closing") of the transactions contemplated hereby shall take place simultaneously at the offices of Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York, at 10:00 a.m., New York City time and Houthoff, Parnassusweg 126, 1076 AT Amsterdam, The Netherlands, at a date agreed to by the parties but in any event not later than 10 Business Days following the latter of such notices from either the AT&T Parties, on the one hand, or the BT Parties and Thistle BV, on the other hand, has been given, or at such other time or date as the parties shall agree upon in writing. The time and date upon which the Closing occurs is referred to herein as the "Closing Date."

(b) At the Closing, upon the terms and subject to the conditions set forth herein, each party will and will cause its Affiliates to take the actions described in Article 21 to be taken at the Closing and this Section 20.1 and execute and deliver such other instruments and take all such other reasonable actions as are necessary to

consummate the transactions contemplated by the Transaction Agreements to be consummated by it and its Affiliates at the Closing.

(c) At the Closing, upon the terms and subject to the conditions set forth herein, each of the parties shall, and shall cause its Affiliates and, insofar as within its power, each of the Newco Subsidiaries to, enter into each of the Transaction Agreements which have not been entered into prior to the Closing Date to which such party, its Affiliates or such Newco Subsidiary, as the case may be, are parties, including the following Transaction Agreements:

- (i) Asset Contribution Agreements;
- (ii) International Traffic Service Agreements;
- (iii) Distribution Agreements (Newco Products);
- (iv) Distribution Agreements (Parent Products);
- (v) Supply Agreements (Parent Components);
- (vi) Investment Fund Agreement; and
- (vii) Employee Matters Agreement.

(d) At such time prior to the Closing as will enable BT Holdings to take the actions and achieve the objectives described herein, BT Holdings in its capacity as the sole shareholder of Thistle BV shall adopt a shareholder's resolution in the form of Exhibit M approving the amendment of the articles of association of Thistle BV in the form as set forth in Exhibit I. Promptly after the adoption of such resolution, BT Holdings shall apply for a declaration of no objections (*verklaring van geen bezwaar*) from the Ministry of Justice of The Netherlands with respect to such

amendment and shall use its Reasonable Best Efforts to obtain such declaration of no objections as promptly as practicable thereafter.

(e) At the Closing:

(i) BT Holdings in its capacity as the sole shareholder of Thistle BV shall adopt a shareholder's resolution in the form of Exhibit N approving the issuance of the shares of Thistle BV to be issued at the Closing and the transfer of Thistle BV shares to VLT as contemplated by Section 20.1(e)(iii).

(ii) Thistle BV shall issue an equal number of shares to each of BT Holdings and VLT and shall receive good title thereto pursuant to a notarial deed of issuance substantially in the form of Exhibit L.

(iii) BT Holdings shall transfer such number of shares of Thistle BV to AT&T or its Affiliate as shall be necessary to cause AT&T or its Affiliate to be the holder of the same number of shares of Thistle BV as BT Holdings, for a total purchase price equal to the aggregate par value of such shares payable at Closing. Such transfer shall effect good title and be effected pursuant to a notarial deed of transfer among such Affiliate of AT&T, BT Holdings and Thistle BV substantially in the form of Exhibit O.

**20.2 Termination Prior to Closing by Either Party.** Either parent may terminate this Agreement and the other Transaction Agreements prior to the Closing by providing written notice thereof to the other parent if:

(a) the Key Governmental Approvals are not obtained within the time frame set forth in Section 18.4(a); provided, however, that either parent, if it is

not in material breach of its obligations in Section 18.4(a) to use its Best Efforts to obtain the Key Governmental Approvals, may extend the 12 month period set forth in Section 18.4(a) by up to two additional three month periods, in each instance, by providing written notice to the other parent no later than five days prior to the expiration of either the 12-month period or the expiry of the first three month extension, as applicable; provided, further, however, that the aggregate total number of such three month extensions by both parents shall not exceed two;

(b) after the date of this Agreement, it becomes highly probable that the Key Governmental Approvals will not be obtained without Burdensome Conditions adversely affecting the Newco Group or the parent seeking to terminate by the eighteenth month anniversary of the date of this Agreement, so long as the failure to satisfy such condition does not result from a breach by the party seeking to terminate of its obligations under any Transaction Agreement;

(c) a Key Governmental Approval with a Burdensome Condition adversely affecting the Newco Group or the parent seeking to terminate has been granted for the transactions contemplated by the Transaction Agreements and is final and not subject to further appeal;

(d) an event(s) or development(s) shall occur or fail to occur with respect to the other parent or Thistle BV that would have a Material Adverse Effect on the proposed Venture Business or on the ability of the other parent to perform its obligations under the Transaction Agreements;

(e) (i) a Change of Control with respect to the other parent shall occur, (ii) the other parent or any of its Group Companies, as of the Closing Date,

would not be in compliance with Section 11.1 or the second sentence of Section 11.6 (assuming such Section were then fully in effect) and has failed to commit to the non-breaching party that it will cure any such default diligently and in good faith and in any event on or prior to the first anniversary of the Closing Date, (iii) there shall exist a Triggering Person with respect to the other parent, unless such other parent is entitled to cure such event in accordance with Section 13.3 and such other parent shall have committed that it will eliminate the circumstances causing the Triggering Person to be the same diligently and in good faith and in any event prior to the first anniversary of the Closing Date, or (iv) there shall exist a Covered Investor with respect to the other party that is a Major Competitor of the party seeking to terminate the Transaction Agreements;

(f) any final and binding order, judgment, injunction, award or decree that is not subject to further appeal shall have been entered that enjoins, restrains or prohibits the consummation of the transactions contemplated hereby or by the Transaction Agreements or puts in doubt the validity of this Agreement or any other Transaction Agreement in any material respect;

(g) any representation or warranty of the other parent contained in this Agreement or the other Transaction Agreements, to the extent qualified by materiality, a Venture Business Material Adverse Effect or an AT&T GCS Business MAE or BT GCS Business MAE, as the case may be, fails to be true and correct or, to the extent not so qualified, fails to be true and correct in all material respects, or the other parent has failed to perform or comply in all material respects with any of its covenants or agreements contained in this Agreement, in the case of any of the



foregoing, which failure cannot be cured on or prior to the Closing Date and has not been waived by the parent that is seeking to terminate the Transaction Agreements; or

(h) if the conditions set forth in Section 21.1(a)(iv) or (v) have not been fulfilled by the Closing Date.

### 20.3 Termination Relating to Non-Compete.

(a) Nothing in this Section 20.3 shall limit, restrict or otherwise affect the rights of the parents to terminate, or not consummate the transactions contemplated by, the Transaction Agreements for the reasons set forth in Section 20.2 or Article 21 or affect any rights of either parent under Section 18.3 or 18.4(a), and each parent shall be entitled to exercise any of its rights thereunder prior to, concurrently with or after the application of the procedures set forth in this Section 20.3.

(b) The parents agree that, in all events, except as may arise in accordance with this Section 20.3, the provisions of Section 11.1 and the second sentence of Section 11.6, including any applicable exceptions thereto, shall remain reciprocal in terms of duration and scope with respect to each parent's Home Territory. If any relevant Governmental Body imposes or requires, as a condition to the grant of its Key Governmental Approval, any restriction, modification, limitation or reduction (any of the foregoing, a "Reduction") of the non-compete provisions of Section 11.1 or the second sentence of Section 11.6 or any applicable exceptions thereto applicable to any Home Country, the European Region, the NAFTA Region or a Home Territory, the parent receiving notice of any such imposition or

requirement for any such Reduction from the Governmental Body shall promptly notify the other parent in writing.

(c) The parent that would benefit from the Reduction (the “Advantaged Party”) shall, within 10 Business Days after the giving or receipt of the notice of the Governmental Body’s imposition or requirement, either (x) exercise any applicable rights under Section 18.4(a), 20.2 or Article 21, or (y) notify the other parent (the “Disadvantaged Party”) in writing (i) whether it will agree to make a corresponding change to the relevant provisions of Section 11.1 or the second sentence of Section 11.6 or any applicable exceptions thereto, as the case may be, with respect to its Home Country or Home Territory, or the European Region or NAFTA Region, as the case may be, so that the provisions of Section 11.1 or the second sentence of Section 11.6 or any applicable exceptions thereto, as the case may be, will be the same for both parents with respect to their Home Countries and their and the other parent’s Home Territory and the same for AT&T in the NAFTA Region as for BT in the European Region, or (ii) whether it declines to do so.

(d) If the Advantaged Party so elects to make the corresponding change, then, subject to Section 20.3(a), the Reduction will not in and of itself entitle the Disadvantaged Party to terminate this Agreement and the other Transaction Agreements.

(e) If the Advantaged Party declines to make the corresponding change, the Disadvantaged Party shall have the right, in addition to any other rights it may have hereunder, by providing written notice thereof to the Advantaged Party

within 10 Business Days after receipt of notice from the Advantaged Party, to terminate this Agreement and the other Transaction Agreements.

20.4 Termination Otherwise Than Permitted. If either parent attempts to terminate this Agreement and the other Transaction Agreements prior to the Closing other than as permitted pursuant to Section 1.6(b), 19.3, 20.2 or 20.3, such action shall constitute a material breach of this Agreement and the other parent shall have all rights and remedies available to it in law or equity, including the right to seek specific performance of the obligations under this Agreement of the party attempting to terminate the Transaction Agreements. Specific performance shall be a non-exclusive remedy for such breach.

20.5 Effect of Termination.

(a) If this Agreement and the other Transaction Agreements are terminated pursuant to Section 1.6(b), 19.3, 20.2 or 20.3, this Agreement and the other Transaction Agreements shall forthwith cease to have effect between and among the parties and all further obligations of the parties shall terminate without further liability, except that (i) such termination shall not constitute a waiver of any rights any party may have by reason of the material failure of any material representation of the other party in this Agreement (but excluding the representations and warranties in Sections 17.1(p) and 17.2(p)) to have been true and correct as of the date of this Agreement, a material breach of Section 18.1(c) or a willful and intentional breach by any other party of any other material covenant contained in this Agreement, (ii) the covenants and agreements contained in Sections 25.2 and 25.3 shall survive for a period of six years following the date of termination (other than with respect to claims

that have been made and are pending resolution as of such date, with respect to which it shall survive without limit), and the other covenants and agreements contained in Sections 18.10 and 28.3 and the Confidentiality Agreements shall survive such termination without limitation as to time.

(b) Except as provided in Section 20.5(a), but notwithstanding anything herein to the contrary, all representations, warranties, covenants and agreements contained herein shall be of no further force or effect after the termination of this Agreement pursuant to Section 1.6(b), 19.3, 20.2 or 20.3.

## ARTICLE 21

### CONDITIONS TO CLOSING

21.1 Condition to Each Party's Obligations. The obligations of each of the parties and their Affiliates to make their Contributions described in Section 15.1 and the obligations of the parties and their Affiliates to enter into the other Transaction Agreements not theretofore executed and delivered to which they are parties and otherwise to consummate the transactions to be consummated by them at Closing are subject to the fulfillment to the satisfaction of, or waiver by, each of AT&T and BT, as of the Closing Date, of the following conditions:

(a) **Governmental Approvals.**

(i) All notifications required pursuant to the HSR Act for the transactions contemplated hereby shall have been made, and the applicable waiting period and any extensions thereof shall have expired or been

terminated without the imposition of any Burdensome Condition adversely affecting the Newco Group or the parent seeking to rely on this condition.

(ii) The European Commission, pursuant to the EU Merger Regulations, shall have granted approval of this Agreement and each other Transaction Agreement and the transactions contemplated hereby and thereby, without the imposition of any Burdensome Condition adversely affecting the Newco Group or the parent seeking to rely on this condition.

(iii) An FCC Order shall have been obtained without the imposition of a Burdensome Condition adversely affecting the Newco Group or the parent seeking to rely on this condition, which has not been revoked or stayed as of the Closing Date.

(iv) All other Governmental Approvals required to be obtained for the consummation of the transactions contemplated hereby shall have been obtained, all applicable pre-consummation waiting periods shall have expired, and no Burdensome Condition adversely affecting the Newco Group or the parent seeking to rely on this condition shall have been imposed by any Governmental Body with respect to the transactions contemplated hereby, except for Governmental Approvals and waiting periods the failure of which to obtain or satisfy would not, individually or in the aggregate, be reasonably likely to impose a Burdensome Condition adversely affecting the Newco Group or the parent seeking to rely on this condition or materially and adversely affect the ability of either the AT&T Parties or the BT Parties to

perform their obligations hereunder or under the other Transaction Agreements.

(v) No action shall have been taken by any Governmental Body to rescind or withdraw any of the Key Governmental Approvals or any Governmental Approvals contemplated by Section 21.1(a)(iv).

(b) **No Injunctions.** No order, judgment, injunction, award or decree shall have been entered or threatened by any Governmental Body that enjoins, restrains or prohibits the consummation of any of the transactions contemplated hereby or by the Transaction Agreements or puts in doubt the validity of this Agreement or any other Transaction Agreement in any material respect.

(c) **Transaction Agreements.** The Transaction Agreements listed in Section 20.1(c) shall have been executed and delivered by the parties thereto and the Charter Documents shall have become effective.

(d) **Asset Purchase Agreements.** The parents or their Affiliates shall have executed and delivered one or more stock or asset purchase agreements as contemplated by Section 15.5(c).

(e) **Accountants' Statement.** PricewaterhouseCoopers or another qualified accounting firm acceptable to the parents shall have issued the Accountants' Statement.

**21.2 Conditions to the Obligations of AT&T.** The obligations of AT&T and the other AT&T Sellers to make their Contributions to the Newco Group pursuant to Section 15.1 and the obligations of each of AT&T and its Affiliates to enter into the other Transaction Agreements to which it is a party and to otherwise consummate the

transactions that are to be consummated by them at the Closing are subject to the fulfillment to the satisfaction of, or waiver by, AT&T, as of the Closing Date, of the following additional conditions:

(a) **Accuracy of Representations and Warranties.** The representations and warranties by BT and its Affiliates in each Transaction Agreement to which they are a party, to the extent qualified by materiality, a Venture Business Material Adverse Effect or a BT GCS Business MAE, shall be true and correct and, to the extent not so qualified, shall be true and correct in all material respects, in each case as of the date they were made and as of the Closing Date, as if made on and as of the Closing Date, except for representations and warranties that are made as of a specified date which need be true and correct, or true and correct in all material respects, as the case may be, only on the specified date. The representations and warranties set forth in Section 17.2(q) that are not qualified by a BT GCS Business MAE shall be treated for the purposes of this Section 21.2(a) as if so qualified.

(b) **Performance of Obligations.** BT and its Affiliates shall have performed or complied in all material respects with their respective covenants and agreements contained in the Transaction Agreements required to be performed or complied with by BT and its Affiliates on or prior to the Closing Date.

(c) **Delivery of Certificates of BT.** BT and BT Holdings shall have delivered to AT&T customary closing certificates and documents, in each case signed by an officer or officers with the authority to bind such party (in each case dated as of the Closing Date), and such other certificates or documents as AT&T or

its counsel may reasonably request evidencing the satisfaction in all material respects of the conditions to Closing.

(d) **Share Certificates.** AT&T or its Affiliate shall have received share certificates or other evidences of its interests in DirectorCo, the Newco Services Company and the Newco Subsidiaries as described in Schedule 2.2 and shall have been satisfied that such shares and other equity interests have been validly issued and, in the case of shares, fully paid and non-assessable, free and clear of all Liens.

(e) **Opinions of Counsel.** AT&T shall have received such reasonable opinions and certificates as are requested by it on reasonable notice to BT.

21.3 Conditions to the Obligations of BT. The obligations of BT and the other BT Sellers to make their Contributions to the Newco Group pursuant to Section 15.1 and the obligations of each of BT and its Affiliates to enter into the other Transaction Agreements to which it is a party and to otherwise consummate the transactions that are to be consummated by them at the Closing are subject to the fulfillment to the satisfaction of, or waiver by, BT, as of the Closing Date, of the following additional conditions:

(a) **Accuracy of Representations and Warranties.** The representations and warranties by AT&T and its Affiliates in each Transaction Agreement to which they are a party, to the extent qualified by materiality, a Venture Business Material Adverse Effect or an AT&T GCS Business MAE, shall be true and correct and, to the extent not so qualified, shall be true and correct in all material respects, in each case as of the date they were made and as of the Closing Date, as if made on and as of the Closing Date, except for representations and warranties that are



made as of a specified date, which need be true and correct, or true and correct in all material respects, as the case may be, only on the specified date. The representations and warranties set forth in Section 17.1(q) that are not qualified by an AT&T GCS Business MAE shall be treated for the purposes of this Section 21.3(a) as if so qualified.

(b) **Performance of Obligations.** AT&T and its Affiliates shall have performed or complied in all material respects with their respective covenants and agreements contained in the Transaction Agreements required to be performed or complied with by AT&T and its Affiliates on or prior to the Closing Date.

(c) **Delivery of Certificates of AT&T.** AT&T and VLT shall have delivered to BT customary closing certificates and documents, in each case signed by an officer or officers with the authority to bind such party (in each case dated as of the Closing Date), and such other certificates or documents as BT or its counsel may reasonably request evidencing the satisfaction in all material respects of the conditions to Closing.

(d) **Share Certificates.** BT or its Affiliate shall have received share certificates or other evidences of its interests in DirectorCo, the Newco Services Company and the Newco Subsidiaries as described in Schedule 2.2 and shall have been satisfied that such shares and other equity interests have been validly issued and, in the case of shares, fully paid and non-assessable, free and clear of all Liens.

(e) **Opinions of Counsel.** BT shall have received such reasonable opinions and certificates as are requested by it on reasonable notice to AT&T.

## ARTICLE 22

BREACH; EVENTS OF DEFAULT

22.1 Breach. Except as otherwise expressly provided herein, a party shall be in breach of this Agreement if it fails fully to perform, or suspends its performance of, its obligations hereunder and if it fails to cure such failure or suspension within 30 days following receipt of written notice thereof from one of the other parties.

22.2 Remedies for Breach. In addition to any other remedies set forth in this Agreement, the remedies for any breach of this Agreement shall include damages and injunctive relief, including specific performance. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

22.3 Events of Default. Following the Closing, except as may otherwise be agreed by the parents, an “Event of Default” with respect to a parent shall have occurred upon the occurrence of any of the following:

- (a) such parent’s material breach of this Agreement (other than a breach of Section 11.1 or the second sentence of Section 11.6) or any other Transaction Agreement, which breach shall remain uncured after the 30-day cure period set forth in Section 22.1 if the impact of such breach on the Newco Group is so material as to go to the essence of the Venture Business;
- (b) a Change of Control shall have occurred with respect to such parent;

(c) such parent shall be in breach of Section 11.1 or clause (a) of the second sentence of Section 11.6 and either (i) such breach is willful, repeated and significant, or (ii) such parent shall not have cured such breach within the one year period after notice thereof from the other parent, and where the Revenue Limitation in Section 11.3 or 11.4 (x) applies with respect to the violating activities, the aggregate total revenues derived from such violating activities exceeds \$400 million (including the amount covered by the Revenue Limitation) or (y) does not apply to the violating activities, the aggregate total revenues from such violating activities exceeds \$200 million, and where in both clauses (x) and (y), (1) the “aggregate total revenues” shall be calculated on a Pro Rata Basis, and (2) the Dollar amounts set forth therein shall be subject to adjustment as provided in Section 11.16;

(d) such parent shall be in breach of clause (b) of the second sentence of Section 11.6 and shall not have cured such breach within the one year period after notice thereof from the other parent; or

(e) there shall exist any Covered Investor with respect to such parent that is a Major Competitor of the other parent or there shall have been a Change of Control involving such parent by a Major Competitor of the other parent (a **“Covered Investor Breach”**).

**22.4 Confirmation of Cure.** If, prior to the expiration of the one year cure period provided in Section 22.3(c) or 22.3(d), the breaching party does not, when requested in writing by the non-breaching party, confirm in writing within five Business Days after receipt of such request that it will diligently and in good faith cure the breach or, thereafter, does not diligently and in good faith undertake to effect

such cure, such breach shall constitute an Event of Default prior to the expiration of any such cure period. If the breaching party does so commit to cure the breach, the non-breaching party shall be entitled to rely thereon, and, in addition to its other rights and remedies, the non-breaching party shall be entitled to payment for any damages resulting from any failure by the breaching party to cure any such breach.

## ARTICLE 23

### TERMINATION OF JOINT VENTURE; CONSEQUENCES OF EVENT OF DEFAULT

23.1 No Dissolution. Each of Thistle BV, DirectorCo, the Newco Services Company and the Newco Subsidiaries shall continue without interruption until it is dissolved or terminated in accordance with this Agreement.

23.2 Performance Test Shortfall.

(a) If a Performance Test Shortfall shall occur, either parent shall be entitled to deliver a written notice (a “Performance Notice”) to the other parent at any time prior to the 180th day following the end of the eighth full Fiscal Year to initiate the dissolution and winding up of the Newco Group in accordance with the provisions of this Section; provided, however, that any Performance Notice delivered prior to the end of the eighth full Fiscal Year shall be revocable until the end of such full Fiscal Year.

(b) If a Performance Notice has been delivered and not then revoked, it shall commence a two year transition period beginning at the later of the last day of the eighth full Fiscal Year or the date the Performance Notice is delivered if such Notice is delivered following the last day of the eighth full Fiscal Year in

accordance with Section 23.2(a) (the "Transition Period"). Unless mutually agreed by the parents, the parents shall, during the Transition Period, cause the business and affairs of the Newco Group to be dissolved and wound up in accordance with Section 23.9.

(c) During the Transition Period, each party agrees to honor and to cause its Affiliates to honor all obligations under the other Transaction Agreements, subject to any exceptions set forth therein.

(d) During the Transition Period, the parent that has received the Performance Notice shall be entitled to appoint an additional Representative to the DirectorCo Board and to elect to cause a Distribution of Netco, in which case the provisions of Schedule 13.2 shall apply and the parent that has delivered the Performance Notice shall bear any Taxes arising in connection therewith (it being understood that such parent may elect none, either or both of such alternatives).

(e) If a parent delivers a Performance Notice, the provisions of clause (b) of the second sentence of Section 11.6 shall, effective upon the last day of the tenth full fiscal year of the Newco Group, be of no further force or effect with respect to either parent and its Group Companies and the remaining provisions of Article 11 shall be of no further force or effect with respect to either parent and its Group Companies on the completion of the dissolution of the Newco Group; provided, however, that, during the Transition Period either parent and its Group Companies may undertake such activities as are necessary or advisable to prepare itself to provide Global Communications Services after the Transition Period.

23.3 Change of Control Termination.

(a) Upon the occurrence of a Change of Control with respect to either parent, such parent shall immediately notify the other parent of such occurrence.

(b) Upon the occurrence of a Change of Control with respect to a parent (the “subject party”), the other parent (the “non-subject party”) shall have the right, but not the obligation, within 90 days following its becoming aware of the occurrence of the Change of Control, whether by notice pursuant to Section 23.3(a) or otherwise, to elect, by written notice delivered to the subject party (the “Put Notice”), to require the subject party to purchase all but not less than all of the non-subject party’s shares or other equity interests in Thistle BV, DirectorCo and the Newco Services Company and all but not less than all of its shares or other equity interests in the Newco Subsidiaries (collectively, the “Put Shares”, and such right to require the subject party to purchase the Put Shares, the “Put”) at a purchase price equal to 110% of their fair market value, determined in accordance with Section 23.7(a).

(c) The provisions of Sections 23.7(b) and (c) shall apply to the closing of the sale and purchase of the Put Shares.

(d) If a non-subject party delivers a Put Notice, the provisions of Article 11 shall, effective upon the closing of the sale and purchase of the Put Shares or, if earlier, the first anniversary of the date of delivery of the Put Notice, be of no further force or effect with respect to either parent and its Group Companies.

**23.4 Termination for Material Breach.**

(a) If an Event of Default described in Section 22.3(a) shall occur with respect to a parent (the “**breaching party**”), the other parent (the “**complying party**”) shall have the right to elect by delivering notice in writing to the breaching party (the “**Election Notice**”), within 60 days after the expiration of the 30-day cure period described in Section 22.3(a), either (i) to require the breaching party to sell all but not less than all of the breaching party’s shares or other equity interests in Thistle BV, DirectorCo and the Newco Services Company and all but not less than all of its shares or other equity interests in the Newco Subsidiaries (collectively, the “**Call Shares**”, and such right to require the breaching party to sell the Call Shares (the “**Call**”) to the complying party at a purchase price equal to 90% of their fair market value determined in accordance with Section 23.7(a), or (ii) to dissolve the Newco Group.

(b) If the complying party elects to require a sale and purchase of the Call Shares, the provisions of Sections 23.7(b) and (c) shall apply to the closing of such sale and purchase.

(c) If the complying party elects to dissolve the Newco Group, the period of dissolution shall, subject to compliance with mandatory requirements of Applicable Law, be no longer than two years from the commencement thereof and the provisions of Section 23.9 shall apply to a dissolution of the Newco Group initiated under this Section 23.4.

(d) In the event of the sale and purchase of the Call Shares or the dissolution of the Newco Group under this Section 23.4, (i) effective upon the date of

delivery by the complying party of an Election Notice, the provisions of Article 11 shall be of no further force or effect with respect to the complying party and its Group Companies, and (ii) if the complying party has elected to purchase the Call Shares, effective upon the closing of the sale and purchase thereof or, if earlier, the first anniversary of the date of delivery of the Election Notice, the provisions of Article 11 shall be of no further force or effect with respect to the breaching party and its Group Companies, or (iii) if the complying party has elected to dissolve the Newco Group, effective upon the completion of the dissolution of the Newco Group, the provisions of Article 11 shall be of no further force or effect with respect to the breaching party and its Group Companies.

(e) Without limiting the foregoing, if an Event of Default described in Section 22.3(a) arises in connection with a Change of Control, the parent that is not subject to the Change of Control shall also have the rights set forth in Section 23.3.

**23.5 Termination for Non-Compete Breaches and Covered Investor Breaches.**

(a) Upon the occurrence of a Covered Investor Breach, the breaching party shall immediately notify the other parent of such occurrence. The other parent shall be the non-breaching party for the purposes of Sections 23.5 and 23.6.

(b) If an Event of Default described in Section 22.3(c), (d) or (e) shall occur, the non-breaching party shall have the right to elect by notice in writing (the "**Breach Notice**") to the breaching party within 90 days after the end of the one



year cure period set forth in Section 22.3(c)(ii) or (d), or at any time after the occurrence of the Event of Default described in Section 22.3(c)(i), if any, or within 90 days of its becoming aware of the occurrence of the Covered Investor Breach, whether by notice pursuant to Section 23.5(a) or otherwise, in the case of a Covered Investor Breach, to dissolve the Newco Group.

(c) If the non-breaching party elects to dissolve the Newco Group, the dissolution shall be completed as soon as practicable but in any event, subject to compliance with mandatory requirements of Applicable Law, within two years following the date of the Breach Notice. The provisions of Section 23.9 shall apply to a dissolution of the Newco Group initiated under this Section 23.5.

(d) If the non-breaching party shall duly deliver a Breach Notice under Section 23.5(b), until the consummation of any such dissolution of the Newco Group, the non-breaching party shall have the rights set forth in Section 13.2.

(e) The remedies set forth in this Section 23.5 shall be in addition to, and not in lieu of, any other remedies that the non-breaching party may have under law or equity or which may be provided for elsewhere in this Agreement.

(f) To determine whether an Event of Default under Section 22.3(c) or (d) or a Covered Investor Breach has occurred, a non-breaching party may refer the matter to the Wise Counselor in accordance with the provisions of Article 24. The non-breaching party shall request the Wise Counselor to make his or her determination within 20 days after the matter has been referred to him or her. The non-breaching party may rely on the determination of the Wise Counselor that such an

Event of Default or Covered Investor Breach has occurred in order to exercise its rights under this Section 23.5.

(g) Article 11 shall be of no further force or effect with respect to (i) the non-breaching party and its Group Companies upon the occurrence of an Event of Default under Section 22.3(c) or (d) or, subject to Section 23.6(a), a Covered Investor Breach, and (ii) the breaching party and its Group Companies upon the completion of the dissolution of the Newco Group.

**23.6 Additional Provisions Relating to a Covered Investor Breach.**

(a) Within 30 days after a definitive agreement has been executed for a transaction that would result in a Covered Investor Breach (the “Covered Transaction”), the parent in respect of which the Covered Investor Breach shall occur (the “Affected Party”) shall notify the non-breaching party and Thistle BV of whether it intends to cure such breach. If the Affected Party fails to give such notice or elects not to cure the breach, then notwithstanding that the Covered Transaction shall not have been consummated, and may never be consummated, (x) the breach of Article 11 that would occur upon the consummation of the Covered Transaction shall be deemed to have occurred upon the earlier of (the “Effective Date”) (i) the expiration of such 30 day period or (ii) the giving of notice by the Affected Party that it does not intend to cure the breach, (y) upon the Effective Date, the non-breaching party shall have the right to exercise its rights under Section 23.5, and (z) upon the Effective Date, Article 11 shall be of no further force or effect with respect to the non-breaching party and its Group Companies.

(b) Notwithstanding anything to the contrary contained herein, so long as the Affected Party and its Group Companies shall elect to, and do, cure the breach of Article 11 within six months after the consummation of the Covered Transaction, then no breach of Article 11 shall be deemed to have occurred. Upon the delivery by the Affected Party of its notice to elect to cure the breach, from the date of the giving of such notice until the expiration of the six month cure period or, if earlier, the date the breach shall have been cured to the satisfaction of the non-breaching party, the non-breaching party shall be entitled to appoint an additional Representative to the DirectorCo Board and to elect to cause a Distribution of Netco, in which case the provisions of Schedule 13.2 shall apply and the Affected Party shall bear any Taxes arising in connection therewith (it being understood that the non-breaching party may elect none, some or all of such alternatives). If the breach has not been cured to the satisfaction of the non-breaching party within such six month cure period, then the non-breaching party shall have all other remedies available to it as contemplated by Section 23.5 and under applicable law, including a separate claim for damages against the Affected Party for misrepresentation and failure to honor its commitment to cure such breach.

(c) Without limiting the foregoing, if a Covered Investor Breach or an Event of Default under Section 22.3(c) or 22.3(d) arises in connection with a Change of Control, the parent that is not subject to the Change of Control shall also have the rights set forth in Section 23.3.

**23.7 Fair Market Value; Sale and Closing of Put Shares or Call Shares.**

(a) Within 10 days after the date of delivery of a Put Notice under Section 23.3 or an Election Notice under Section 23.4, the parents shall select an Appraiser in accordance with Annex 2. The Appraiser shall determine the fair market value of the Put Shares or Call Shares in accordance with Annex 2.

(b) The closing of the sale and purchase of the Put Shares or the Call Shares, as the case may be, shall take place within 90 days after the date of receipt of the Appraiser's report on a date mutually agreed to by the parents; provided that such date shall be subject to extension up to a maximum period of 15 months solely for the purposes of obtaining all material Governmental Approvals that may be required in connection with the sale and purchase thereof. The closing shall take place at the offices of Houthoff, Parnassusweg 126, 1076 AT Amsterdam, The Netherlands or at such other place as the parents shall agree. The parents shall, and shall cause Thistle BV and the applicable Newco Subsidiaries to, use their Reasonable Best Efforts in cooperation with each other promptly to make all filings, give all notices and secure all Third Party Approvals and Governmental Approvals that may be required in connection with the sale and purchase of the Put Shares or the Call Shares, as the case may be. If, notwithstanding the extension of the period for the closing of the sale and purchase of the Put Shares or the Call Shares, as the case may be, all material Governmental Approvals have not been or cannot be obtained, on or prior to the expiration of the additional 15-month period, the parent that delivered the Put Notice or Election Notice, as the case may be, may, by notice to the other parent delivered within 10 Business Days after the expiration of such 15-month period,

elect to cause the dissolution of the Newco Group. The provisions of Section 23.9 shall apply to a dissolution of the Newco Group initiated under this Section 23.7(b); provided, however, that, notwithstanding the provisions of Annex 1, the parent that delivered the Put Notice or Election Notice, as the case may be, shall be entitled to be allocated assets and liabilities of the Newco Group in such a manner so as to approximate as closely as practicable any discount or premium that it would have been entitled to had the sale and purchase of the Put Shares or Call Shares been consummated. The dissolution shall be completed as soon as practicable but in any event, subject to compliance with mandatory requirements of Applicable Law, within one year after the expiration of the 15-month extension period.

(c) At the closing of the sale and purchase of the Put Shares or Call Shares, as the case may be, (i) the purchasing parent (which shall include its Affiliate that is a shareholder or member of the members of the Newco Group and of DirectorCo) shall pay to the selling parent (which shall include its Affiliate that is a shareholder or member of the members of the Newco Group and of DirectorCo) the applicable purchase price in cash or by cashier's order or wire transfer of funds or any combination of the foregoing, (ii) in the case of shares of Thistle BV, the selling parent shall transfer the shares of Thistle BV comprising a part of the Put Shares or the Call Shares, as the case may be, to the purchasing parent pursuant to a notarial deed of transfer among the selling parent, the purchasing parent and Thistle BV substantially in the form of Exhibit Q, and all requisite share transfer taxes or share transfer costs shall be borne equally by the parents in the case of the shares of Thistle BV comprising a part of the Put Shares and solely by the breaching party in the case

of the shares of Thistle BV comprising a part of the Call Shares, and (iii) in the case of the shares and equity interests in other members of the Newco Group and of DirectorCo, the selling parent shall deliver duly executed transfer forms and sold notes or other instruments of transfer, together with certificates representing such other shares and equity interests comprising a part of the Put Shares or the Call Shares, as the case may be (if applicable), duly endorsed for transfer and accompanied by payment of all requisite share transfer taxes, which shall be borne equally by the parents in the case of such other shares and equity interests comprising a part of the Put Shares and solely by the breaching party in the case of such other shares and equity interests comprising a part of the Call Shares, and such Put Shares or Call Shares, as the case may be, shall be free and clear of any Liens (other than those arising hereunder), and the selling parent shall so represent and warrant to the purchasing parent, and shall further represent and warrant to the purchasing parent that it is the record, beneficial and legal owner of all such Put Shares or Call Shares, as the case may be, with full power and authority to transfer such Put Shares or Call Shares, as the case may be.

23.8 Licensing Obligations. Notwithstanding anything to the contrary contained herein, including Annex 1 attached hereto:

(a) Upon the dissolution of the Newco Group or the withdrawal of BT from the Newco Group whether pursuant to the exercise by AT&T of its rights under Section 23.3 or by BT of its rights under Section 23.4, BT shall be entitled to purchase at fair market value such assets of the Newco Group located in the U.K. as

are required to be owned by BT in order to operate under its then existing licenses in the U.K.; and

(b) Upon the dissolution of the Newco Group or the withdrawal of AT&T from the Newco Group whether pursuant to the exercise by BT of its rights under Section 23.3 or by AT&T of its rights under Section 23.4, AT&T shall be entitled to purchase at fair market value such assets of the Newco Group located in the United States as AT&T can demonstrate clearly are of the same type that would be purchasable by BT as required by BT's then existing licenses if BT were purchasing assets under Section 23.8(a).

(c) Either parent purchasing assets pursuant to this Section 23.8 shall indemnify Thistle BV and the other parties for all Taxes arising in connection therewith.

#### 23.9 Division of Assets on Dissolution.

(a) With respect to any dissolution initiated pursuant to Section 11.2(d), 11.5(c)(iii), 13.4, 13.5, 14.3, 23.2, 23.4, 23.5 or 23.7, subject to the provisions of Section 23.8, the assets and liabilities of the Newco Group shall be divided between the parents in accordance with the provisions set forth on Annex 1 attached hereto and to such additional provisions as the parents mutually determine are necessary or advisable. Such division of the assets and liabilities will be administered by an independent third party agreed by the parents, who shall be an internationally recognized accounting or similar firm or individual with expertise in the telecommunications industry; provided, that, if the parents are unable to agree upon such independent third party within 30 days following the delivery of the

applicable notice of election to dissolve the Newco Group provided in Section 11.2(d), 11.5(c)(iii), 13.4, 13.5, 14.3, 23.4(b), 23.5(b) or 23.7(b), or, in the case of Section 23.2, following the later of the end of the eighth full Fiscal Year if a Performance Notice has been given and the first delivery of a Performance Notice, either parent may thereafter submit its choice of an independent third party administrator to the Wise Counselor and request the Wise Counselor to make his or her choice within 20 days following the submission of the matter to him or her. The parents shall cause the third party administrator referred to in the preceding sentence to be elected as the liquidator (*vereffenaar*) of Thistle BV pursuant to the relevant provisions of the Thistle BV Charter Documents and, unless both parents otherwise agree, shall cause VLT and BT Holdings to vote all of their shares of Thistle BV against any resolution for the removal or suspension of such liquidator. Any successor liquidator of Thistle BV may be elected by the parents only in accordance with the provisions of the preceding two sentences. Each party shall execute, or cause to be executed such documents and other instruments and take or cause to be taken such further actions as may be reasonably requested to carry out the dissolution pursuant to the provisions of Annex 1, including using its Reasonable Best Efforts in cooperation with the other promptly to make all filings, give all notices, and secure all Third Party Approvals and Governmental Approvals and execute such documents and instruments in reasonable and customary form that may be required in connection with the division of the assets and liabilities of the Newco Group or otherwise with respect to the dissolution of the Newco Group.



(b) If and to the extent that any provision of this Article 23 relating to the distribution of assets upon dissolution of Thistle BV cannot be given direct effect because such provision conflicts with mandatory provisions of Applicable Law, the parent receiving more assets in such dissolution than it is entitled to receive pursuant to this Article 23 shall, promptly after its receipt of such assets, transfer such assets without consideration to the other parent.

**23.10 Effect of Termination.** Except as otherwise expressly provided in this Agreement, upon completion of the dissolution of the Newco Group or the consummation of a Put or a Call, all provisions of this Agreement shall terminate and be of no further force or effect, except Articles 1, 14, 17 (to the extent necessary to form the basis of any claims pursuant to Article 25), 24 and 25 and Sections 18.7, 18.10, 28.3, 28.5, 28.6, 28.7, 28.8, 28.9 and 28.10 and Annex 1 and Annex 3. Except as expressly provided in any Transaction Agreement, each Transaction Agreement shall terminate upon the earlier of (i) completion of the dissolution of the Newco Group, or (ii) the later of (x) two years following the giving of a Put Notice or an election Notice or (y) the consummation of the Put or Call.

## ARTICLE 24

### DISPUTE RESOLUTION

#### 24.1 College of Wise Counselors.

(a) AT&T and BT will appoint by mutual agreement a “Wise Counselor” who is disinterested with respect to, and independent of, the parents and knowledgeable about the Venture Business, AT&T and BT and about the relationship

between the parents. For this purpose, the initial Wise Counselor, and four other persons, who satisfy the criteria set forth in the preceding sentence (the “College of Wise Counselors”) will be identified in Schedule 24.1(a), which will be agreed upon on or before April 30, 1999.

(b) The initial Wise Counselor and each successor Wise Counselor shall serve for a term of 18 months; provided, however, that any matters, or series of directly related matters, submitted to the Wise Counselor prior to the end of such 18-month period shall remain within his or her authority to resolve. No later than 45 days prior to the end of the term of a Wise Counselor, either parent may, by notice to the other parent, designate a replacement Wise Counselor for the next 18-month period from among the College of Wise Counselors. If within such 45-day period, the other parent does not propose an alternative replacement, then the replacement designated by the parent that issued a notice shall become the successor Wise Counselor. If within such 45-day period, the other parent does indicate by notice to the first notifying parent that it wishes to appoint a different successor Wise Counselor, the parents shall promptly submit the two choices to the remaining members of the College of Wise Counselors for selection. The remaining members of the College of Wise Counselors shall be requested to make their selection within five days after referral of the matter to them. If neither parent designates a replacement, the then serving Wise Counselor shall continue to serve as Wise Counselor for the following 18-month period.

(c) Each time a person is designated as a successor Wise Counselor from the College of Wise Counselors, the parents shall agree upon and identify

another person to become one of the members of the College of Wise Counselors (it being understood that at all times there will be four persons in the College of Wise Counselors). If the parents cannot agree on an additional Wise Counselor to be added to the College of Wise Counselors, the appointment shall be made by the Wise Counselors who then constitute the College of Wise Counselors. They shall be instructed that their nominee must satisfy the requirements in the first sentence of Section 24.1(a).

**24.2 Resignation or Replacement of Wise Counselor.** It is understood that the Wise Counselor will be free to resign his or her appointment at any time without liability whatsoever. Within 10 days after the Wise Counselor resigns or ceases to act for any reason whatsoever, BT and AT&T will, by mutual agreement, appoint a successor in accordance with the provisions for selection of a successor from the College of Wise Counselors described in Section 24.1, which successor shall serve for an 18-month term from his or her appointment. BT and AT&T, by mutual consent, may at any time designate a successor Wise Counselor from the College of Wise Counselors.

**24.3 Submission of Claims.**

(a) Subject to Sections 24.4(c) and 24.5, after the Closing, any dispute, controversy or claim (each such dispute, controversy or claim, a "Claim") arising out of or relating to this Agreement or any of the other Transaction Agreements of a legal or contractual nature or any breach of any provision hereof or thereof shall be resolved by arbitration before the Wise Counselor who shall apply the law governing the applicable Transaction Agreement, and judgment upon the award

rendered by him or her may be entered upon application of the party entitled thereto in the U.S. District Court for the Eastern District of Virginia (the "District Court"); provided, however, that no Claim may be submitted to the Wise Counselor by any party to this Agreement or any of the Transaction Agreements unless and until a senior officer of each of the parents shall have met and conferred with respect thereto (unless the other parent shall have failed to comply with a request to confer after reasonable notice).

(b) For purposes of court enforcement of a Wise Counselor's award pursuant to Section 24.3(a), the Wise Counselor's award shall have the force and effect of an arbitral award under the United States Federal Arbitration Act, and shall be directly enforceable in The Netherlands in accordance with the provisions of the Dutch Code of Civil Procedure. Subject to Sections 24.4(c) and 24.5, the decision and award of the Wise Counselor will be final and conclusive upon the parties with respect to all matters referred to the Wise Counselor.

(c) With respect to any claim relating to the validity or infringement of a United States patent, the determination of the Wise Counselor will be non-binding upon the parties. The proceedings of the Wise Counselor on such matters will be conducted as provided in Section 24.4. Any non-binding determination of the Wise Counselor on the matters referred to in this Section 24.3(c) shall be deemed to meet the requirements of Section 24.5(a) for submission to the District Court for binding determination.

#### 24.4 Proceedings Before the Wise Counselor.

(a) All hearings before the Wise Counselor will be conducted in Alexandria, the Commonwealth of Virginia under such procedures (including, presentation of written submissions or presentation of evidence) as he or she considers appropriate in the circumstances; provided, however, that:

(i) in any proceeding conducted by the Wise Counselor, (x) discovery shall be limited to the production of specific and directly relevant documents, and any such discovery must be concluded by the party seeking such discovery within 30 days of its initial demand for discovery, and (y) no depositions shall be permitted; and

(ii) any Claim or series of related Claims submitted to the Wise Counselor shall be completed, and the Wise Counselor's decision delivered to the parties, within a period of three months from the submission of the matter to the Wise Counselor.

(b) With respect to specialized disputes, including IPR-related disputes, the Wise Counselor shall be entitled to retain experts and specialists at the expense of Thistle BV to assist him or her.

#### 24.5 District Court.

(a) Notwithstanding anything herein to the contrary but subject to Section 24.6, if (i) the Wise Counselor awards monetary damages in an amount equal to or in excess of \$500 million in any proceeding commenced pursuant to this Agreement, whether or not accompanied by any injunctive relief, or (ii) if (1) the Wise Counselor issues injunctive relief, or a combination of injunctive relief and an

award of monetary damages in an amount less than \$500 million in any such proceeding, and (2) a Settlement Offer has been made and has not been accepted, then, the injunctive relief granted by the Wise Counselor shall be binding, subject to any order or other ruling by the District Court as contemplated by Section 24.5(b), and any losing party may, within 10 Business Days after the date of such award or the failure to accept such Settlement Offer, respectively, submit the Claim or series of related Claims giving rise thereto to the District Court or otherwise seek a judicial declaration in the District Court that it is not liable on the Claim or series of related Claims that were asserted by the winning party or parties and in respect of which the Settlement Offer was rejected.

(b) In such event, the District Court shall review the matter, including all factual and legal issues, on a *de novo* basis and affirm, vacate or revise the determination of the Wise Counselor and the injunctive relief previously granted. The decision of the District Court shall be appealable to the full extent provided by Applicable Law and procedures.

(c) No party shall object to the introduction by any other party into the record before the District Court of the evidentiary record, findings and holdings of the Wise Counselor in the arbitration of the Claims, but the District Court shall not give such evidentiary record, findings and holdings any special weight or deference.

(d) The scope of any additional discovery, which may include depositions, shall be determined by the District Court, provided, that any such additional discovery must be completed by the parties no later than 90 days following the commencement of such discovery in the District Court; and, provided, further,

however, that any party that files a motion to the District Court to extend discovery beyond such 90-day period shall, notwithstanding the provisions of Section 24.8, pay all costs and expenses, including the fees and expenses of counsel, that the other party may incur in both (i) resisting any such motion, and (ii) complying with any order that the District Court may issue granting such request for the extension of discovery.

(e) For the purposes of this Agreement, each party irrevocably submits to the jurisdiction of the District Court solely for the purpose of interpretation and enforcement of matters relating to this Agreement and the other Transaction Agreements, and, unless otherwise agreed by the parties, the District Court shall have exclusive jurisdiction and each party agrees that all legal actions, suits and proceedings arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted only in the District Court. Each party agrees not to assert, by way of motion, as a defense, or otherwise, in any such action, suit or proceeding, any claim that it is not subject personally to the jurisdiction of the District Court, that its property is exempt or immune from attachment or execution, that the action, suit or proceeding is brought in an inconvenient forum, that the venue of the action, suit or proceeding is improper, or that this Agreement or the subject matter hereof may not be enforced in or by the District Court, and hereby waives any offsets or counterclaims in any such action, suit or proceeding pertaining thereto. In any such action, suit or proceeding, each party waives, to the fullest extent it may effectively do so, personal service of any summons, complaint or other process and agrees that service thereof may be made by registered airmail, return receipt

requested, or by any other means of mail which requires a signed receipt, postage prepaid, mailed to such party as provided in Section 27.2.

(f) **EACH OF THE PARTIES HEREBY AGREES, AND AGREES TO CAUSE ITS SUBSIDIARIES, TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER TRANSACTION AGREEMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN THE DISTRICT COURT OR ANY OTHER COURT AND THAT RELATE TO THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.**

24.6 Settlement Offer. Notwithstanding anything to the contrary contained herein, if with respect to the Claims in any proceeding before the Wise Counselor, the Wise Counselor grants injunctive relief, or a combination of monetary damages of less than \$500 million and injunctive relief, and any of the losing parties believes that the value of the injunctive relief or the damages plus injunctive relief is greater than \$500 million, such party may, at its sole option, within 10 Business Days after the determination of the Wise Counselor, make an offer in writing to the winning party or parties, of \$500 million in the aggregate to all the winning parties with respect to such claims (the "Settlement Offer"). If the Settlement Offer is not accepted by all



of the winning parties within 20 days after receipt of the Settlement Offer, the injunctive relief, or the award and the injunctive relief, as the case may be, shall be deemed to be an award of monetary damages in excess of \$500 million, and the procedures described in Section 24.5 shall apply. If the winning party or parties accept the Settlement Offer, the losing party or parties shall within 10 Business Days after receipt of written confirmation of the winning party or parties of their acceptance of the Settlement Offer, pay the \$500 million to the winning party or parties by wire transfer of same day funds to the bank account or accounts designated by it or them. Thereupon, the losing party or parties shall be released from all liability for the Claims, including injunctive relief, that were the subject of the arbitration proceeding and any comparable Claims, and the winning party or parties will have no further recourse with respect thereto.

24.7 Pre-Closing Claims. Prior to the Closing, any party may institute any legal action, suit or proceeding arising out of or relating to this Agreement or the other Transaction Agreements in the District Court, and the parties agree that the District Court shall have exclusive jurisdiction to adjudicate the same.

24.8 Payment of Costs. All costs and expenses reasonably incurred by the winning party or parties in connection with either the Wise Counselor or judicial proceedings pursuant to this Agreement, including fees, charges and disbursements of attorneys, whether prior to or after the Closing, shall be paid by the losing party or parties.

24.9 Exclusive Method of Dispute Resolution. The parties hereby agree that the provisions of this Article 24 constitute an exclusive agreement for the settlement

of disputes (“*regeling voor de oplossing van geschillen*”) as referred to in Book 2, article 337, of the Dutch Civil Code and each party hereby, to the fullest extent permitted by Applicable Law, waives any right such party may have to initiate any of the procedures against the other parties referred to in Book 2, Title 8, Part 1, of the Dutch Civil Code.

## ARTICLE 25

### SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

25.1 Survival Period. Except for Sections 17.1(q) and 17.2(q), all representations, warranties, covenants and agreements of the parties contained in this Agreement, the IPR Agreement and the Employee Matters Agreement shall survive the Closing, and all such representations and warranties of the parents shall thereafter terminate and expire on the 90th day after the end of the second full Fiscal Year or, if later, 30 days after the delivery of the audited financial statements described in Section 6.7(a)(iii) for the second full Fiscal Year, with respect to any claim based upon, arising out of or otherwise in respect of any fact, circumstance or Action of which the party asserting such claim shall not have given written notice on or prior to such date to the party against which such claim is asserted, and thereafter neither parent shall have any liability in respect of any claim in respect of which such written notice shall not have been given on or prior to such date. No claim may be asserted against an Indemnifying Party for breach of any representation or warranty contained herein, unless written notice of such claim is received by the Indemnifying Party describing in detail the facts and circumstances with respect to the subject matter of